

a similar form may be used if approved by OGC; and

(viii) Written approval of the Administrator when required under § 1951.226(a)(3) of this subpart;

(2) *Releasing security.* (i) The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.226(b) of this subpart and § 1962.17 and § 1962.27 of subpart A of part 1962 of this chapter have been complied with. Partial release may be made by using Form FmHA or its successor agency under Public Law 103-354 460-1, "Partial Release," or Form FmHA or its successor agency under Public Law 103-354 462-12, "Statements of Continuation, Partial Release, Assignment, Etc."

(ii) Subject to § 1951.226(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form FmHA or its successor agency under Public Law 103-354 465-1. Partial release of real estate security may be made by use of Form FmHA or its successor agency under Public Law 103-354 460-1 or other form approved by OGC.

(3) FmHA or its successor agency under Public Law 103-354 liens will not be released until the sale proceeds are received for application on the Government's claim. In states where it is necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the insured lender may be deducted from the sale proceeds.

(d) *Release from liability.* (1) When an FmHA or its successor agency under Public Law 103-354 debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA or its successor agency under Public Law 103-354 1965-8.

(2) When sale proceeds are not sufficient to pay the FmHA or its successor agency under Public Law 103-354 debt in full, any balance remaining will be

handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103-354 1965-8 and obtaining from the County Committee a memorandum recommending the release which contains the following statement:

_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liability upon the completion of the sale.

[55 FR 4399, Feb. 8, 1990, as amended at 69 FR 70884, Dec. 8, 2004]

§ 1951.227 Protective advances.

The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA or its successor agency under Public Law 103-354 if the debt instrument provides that FmHA or its successor agency under Public Law 103-354 may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(a) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(b) Protective advances are not to be used as a substitute for a loan.

(c) Vouchers are prepared in accordance with applicable procedures set forth in FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36591, Aug. 14, 1992]

§§ 1951.228–1951.229 [Reserved]

§ 1951.230 Transfer of security and assumption of loans.

(a) *General.* It is FmHA or its successor agency under Public Law 103–354 policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA or its successor agency under Public Law 103–354’s security position or the FmHA or its successor agency under Public Law 103–354 program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA or its successor agency under Public Law 103–354 is not less than it would be if the transfer were to an ineligible applicant.

(4) If the FmHA or its successor agency under Public Law 103–354 debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present value.

(5) If the transfer and assumption is to one or more members of the borrower’s organization, there must not be a loss to the government.

(6) FmHA or its successor agency under Public Law 103–354 concurs in plans for disposition of funds in the transferor’s debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form FmHA or its successor agency under Public Law 103–354 400–4 to continue nondiscrimination covenants and provide to FmHA or its successor agency under Public Law 103–354 a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full account of the FmHA or its successor agency under Public Law 103–354 debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA or its successor agency under Public Law 103–354 debt will be paid.

(9) Transferees must have the ability to pay the FmHA or its successor agency under Public Law 103–354 debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balanced sheet using Form FmHA or its successor agency under Public Law 103–354 442–3, “Balance Sheet,” and budget and cash flow information using Form FmHA or its successor agency under Public Law 103–354 442–2, or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased to exist. Such transactions must be distinguished from transfers and assumptions, in which a transferor will